



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Numbers:
UI-2022-002396 (EA/11592/2021)
UI-2022-002397 (EA/11594/2021)**

THE IMMIGRATION ACTS

**Heard at Field House
On the 13 October 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

**UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

Between

**MRS HAMIDA HAMIDA
MR RIAZ AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ECO

Respondent

Representation:

For the Appellants: Mr T Mahmood, Legal Representative, Goodfellows Solicitors

For the Respondent: Ms S Lecointe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. The first named Appellant's date of birth is 1 January 1958. Her husband, the second named Appellant's

date of birth is 1 January 1956. They made an application under the EU Settlement Scheme (EUSS) for a family permit as family members of an EEA citizen, their son Fakhar Ahmed. The Entry Clearance Officer refused the application. It was not accepted that the Appellants were related to the Sponsor as claimed.

2. On 12 May 2022 the First-tier Tribunal (Judge Thapar) granted the Appellants permission to appeal against the decision of the First-tier Tribunal (Judge Bagral) to dismiss their appeals. The judge determined the appeal on the papers at the request of the Appellants.
3. The papers were put before the judge on 4 January 2022. On 24 January 2022 the Appellants' solicitors submitted DNA evidence supporting that the Appellants and the sponsor are related as claimed. The decision of the judge was not promulgated until 16 February 2022 and the DNA evidence therefore reached the Tribunal prior to promulgation whilst the judge was seised of the matter. The judge did not make reference to the DNA evidence in her decision. We accept that the evidence was not put before the judge before the decision was promulgated.
4. We take into account that the DNA report should have been served before 4 January 2022. Mr Mahmood indicated to us that it was not prepared until 20 January 2022 because there had been some problem concerning contamination. Regrettably the solicitors did not make the position clear to the First-tier Tribunal, namely that the evidence should be urgently placed before the judge. In any event, we are satisfied that the evidence should have been before the judge who would then have been able to decide whether to ask for further submissions or to reconvene the hearing. We agreed that there was a procedural irregularity. In these circumstances we remitted the hearing to the First-tier Tribunal to be heard afresh.
5. The decision of the First-tier Tribunal to dismiss the Appellants' appeals is set aside. We remit the matter to the First-tier Tribunal to be heard afresh.

No anonymity direction is made.

Signed *Joanna McWilliam*

Date 31 October 2022

Upper Tribunal Judge McWilliam